

**This Opinion is Not a
Precedent of the TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re First Republic Real Estate, Inc.

Serial No. 88087271

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for First Republic Real Estate, Inc.

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Before Zervas, Wellington, and Lynch
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

I. Background

First Republic Real Estate, Inc. (“Applicant”) seeks to register on the Supplemental Register the mark PROFESSIONAL PROPERTY MANAGEMENT in standard characters for “Real Estate Agency, Real Estate Management, Real Estate Leasing, Real Estate Property Management and Real Estate Brokerage Services” in

International Class 36.¹ The application includes a disclaimer of “PROPERTY” and “MANAGEMENT.” The Examining Attorney has refused registration of the mark as generic under Sections 23(c) and 45, 15 U.S.C. §§ 1091(c) and 1127, and therefore incapable of distinguishing the identified services. When the Examining Attorney made the genericness refusal final, Applicant requested reconsideration and appealed. The Examining Attorney maintained the refusal, the appeal resumed, and the case has been briefed.

II. Genericness

“A generic term ‘is the common descriptive name of a class of goods or services.’ [citation omitted]. A generic mark, being the ‘ultimate in descriptiveness,’ cannot acquire distinctiveness.” *Royal Crown Co. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1045 (Fed. Cir. 2018) (quoting *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986)); *see also USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 207 L. Ed. 2d 738, 2020 USPQ2d 10729, *1 (2020). The Examining Attorney bears the burden of establishing that a proposed mark is generic. *In re Hotels.com, L.P.*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009); *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Registration is properly refused if the mark is generic with respect to any one of the goods or services in a class. *See In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988) *aff’d*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir.

¹ Application Serial No. 88087271 was filed August 21, 2018, based on an allegation of use of in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a). Applicant amended the application on May 16, 2019 to seek registration on the Supplemental Register.

1989) (unpublished); *Cf. In re Stereotaxis Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005), quoting, *In re Richardson Ink Co.*, 511 F.2d 559, 185 USPQ 46, 47 (CCPA 1975) (“Our predecessor court ... has stated that registration should be refused if the mark is descriptive of any of the goods for which registration is sought.”).

Whether a proposed mark is generic rests on its primary significance to the relevant public. *In re Am. Fertility Soc’y*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991). Making this determination “involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?” *Marvin Ginn*, 228 USPQ at 530; *see also Royal Crown*, 127 USPQ2d at 1046. The relevant public is the purchasing or consuming public for the recited real estate-related services, which the evidence discussed below reflects includes individual homeowners in the general public as well as commercial real estate owners. *See Magic Wand*, 19 USPQ2d at 1553.

A. Genus

Because the identification of goods or services in an application defines the scope of rights that will be accorded the owner of any resulting registration under Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b), generally “a proper genericness inquiry focuses on the description of [goods or] services set forth in the [application or] certificate of registration.” *Cordua Rests.*, 118 USPQ2d at 1636 (quoting *Magic Wand*, 19 USPQ2d at 1552). In this case, both Applicant and the Examining Attorney

agree that the identification appropriately expresses the genus of services at issue. We concur. Thus, the ultimate inquiry is whether the relevant public understands PROFESSIONAL PROPERTY MANAGEMENT to refer to any of the following: “Real Estate Agency, Real Estate Management, Real Estate Leasing, Real Estate Property Management and Real Estate Brokerage Services.”²

B. Public Understanding

In assessing whether the relevant public understands the term primarily to refer to the genus, “[e]vidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Merrill Lynch*, 4 USPQ2d at 1143; *see also Cordua Rests.*, 118 USPQ2d at 1634. In some cases, dictionary definitions and an applicant’s own recitation of services may suffice to show genericness. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987); *see also Am. Fertility Soc’y*, 51 USPQ2d at 1836.

Applicant’s recitation of services includes “real estate property management,” and the application includes a disclaimer of PROPERTY and MANAGEMENT. As to PROFESSIONAL in the context of this mark, Applicant submitted screenshots of its website that describes its business as “a full service property management company”³

² Applicant argues in its Brief that the Examining Attorney improperly characterized the genus of services, but Applicant’s actual complaint relates to the persuasiveness – or lack thereof, in Applicant’s view – of the evidence of public understanding of the term in relation to the relevant services.

³ October 2, 2019 Response to Office Action at 12.

whose broker-agents are characterized as highly trained experts. Applicant's website also states, "Each of our **Professional** and Experienced Broker-Agents are California State licensed and lives in the area."⁴ See *In re Reed Elsevier Props.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (appropriate to consider the applicant's website to provide context for and inform the understanding of the identification); *In re Steelbuilding.com*, 415 F.3d 1293, 75 USPQ2d 1420 (Fed. Cir. 2005) (examining the subject website in order to understand the meaning of terms). Applicant also submitted the Wikipedia entry for "Property management," which states in part:

An owner of a single-family home, condominium, or multi-family building may engage the services of a **professional property management** company. The company will then advertise the rental property, handle tenant inquiries, screen applicants, select suitable candidates, draw up a lease agreement, conduct a move in inspection, move the tenant(s) into the property and collect rental income. The company will then coordinate any maintenance issues, supply the owner(s) with financial statements and any relevant information regarding the property, etc.⁵

Bearing in mind that we assess the mark in its entirety, on this record, we nonetheless also find it "useful to consider the public's understanding of the individual words." See *Princeton Vanguard*, 114 USPQ2d at 1832-33. Applicant's identification, specimen, and Wikipedia entry shed light on the public understanding of the component terms in the proposed mark, and "are probative of the public's

⁴ *Id.* at 8 (emphasis added).

⁵ April 17, 2020 Request for Reconsideration at TSDR 10-11 (Wikipedia.com) (emphasis added).

understanding of their combination.” See *In re Empire Tech. Dev. LLC*, 123 USPQ2d 1544, 1550 (TTAB 2017).

The Examining Attorney evidence, which shows overwhelming third-party generic use of “professional property management” in its entirety in reference to real estate-related services, helps provide a more complete picture of the public’s perception of the proposed mark. The Examining Attorney submitted a variety of evidence, including numerous articles and third-party website screenshots showing that businesses use the term “professional property management” to refer to the genus of services, real estate management, real estate leasing, and real estate property management, as recited in the Application. Examples include the following, with emphasis added:

- The website of ManageMyProperty.com includes a post titled, “Why hire a **professional property management** company?” The article describes how hiring a property management company facilitates research and marketing to “minimize vacancies and maximize income,” screening potential lessees, and maintaining the property.⁶
- The Peake Management Inc. website includes a page “About Your **Professional Property Management** Team of Northern Virginia.”⁷
- The website of NARPM Northern Virginia Chapter includes an article titled “Why Northern Virginia Homeowners and Real Estate Investors Should Hire

⁶ October 18, 2019 Office Action at TSDR 2-3 (managemyproperty.com).

⁷ October 18, 2019 Office Action at TSDR 4 (peakeinc.com).

A **Professional Property Management** Company,”⁸ offering the organization’s services to “help you become more educated about **professional property management**” and “help Northern Virginia property owners and real estate investors become better educated about how to find a qualified and **professional property management** company in Northern Virginia.”⁹ An interview portion of the feature includes quotes about how “a professional [can] help keep [landlords] out of court,” “a professional property manager knows a lot more about tax benefits and can help guide owners,” and that because the time to care for a property is worth money, it is “cheaper to hire a **professional property management** firm.”¹⁰

- The Specialized Property Management website includes an article on “DIY vs. **Professional Property Management**,” noting that they are often asked by rental property owners “if it’s possible for them to manage on their own, without professional help.” The article states that “[l]andlords and investors who are deciding between self-management and professional property management need to keep some important things in mind,” including that “with a professional management company, you are going to find a wider range of knowledge, experience, and resources available.”¹¹ It goes on to point out that, “[w]ith a **professional property management** company, you will not

⁸ October 18, 2019 Office Action at TSDR 7 (novanarpm.org).

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 10.

¹¹ October 18, 2019 Office Action at TSDR 16-17 (specializedorlando.com).

have to worry about who you will call when there's a leak in the middle of the night.”¹²

- The R Real Property Management website features an article titled “What Does a Property Manager Do for You?” providing reasons to “entrust the management of your rental property to a professional property manager,” including that “[p]rofessional property managers are experts at finding good tenants,” and “having the peace of mind and knowing that everything is taken care of is just one reason why you chose to hire a professional property manager.”¹³ The article points out that “[t]he whole point of hiring a **professional property management** company is so they can handle the hard stuff” with a rental property.¹⁴
- The A&A **Professional Property Management** website offers “to save you valuable time & energy with your property,” and has menu listings for “Owner Services” and a tab labeled “Let Us Manage Your Property!”¹⁵
- The Midwest webpage on “Property Management Services” promotes “Marketing & Leasing,” “Accounting & Bookkeeping,” and “Management & Administration,” and describes itself as “a full service **Professional Property Management** Company” that manages residential real estate.¹⁶

¹² *Id.* at 18.

¹³ October 18, 2019 Office Action at TSDR 22-24 (realpropertymgt.com).

¹⁴ *Id.* at 25.

¹⁵ October 18, 2019 Office Action at TSDR 33 (aapropertymanagement.com).

¹⁶ October 18, 2019 Office Action at TSDR 36-37 (midwestrents.com).

- The website of Optimum **Professional Property Management** promotes their “professional management services” for communities of, *inter alia*, condominiums and single family homes.¹⁷
- The Austin Property Management website states that “Bella Real Estate is the **Professional Property Management** company that you have been looking for! Our Brokers and Agents have several years experience in the property management industry.” Their services include “Property Marketing,” “Tenant Screening,” “Rent Collection,” “Property Inspection,” and “Financial Reports.”¹⁸
- The Red Wagon website asks “Looking for a company that offers **professional property management** in San Antonio? Red Wagon tailors its services to investors, homeowners and landlords to give you the services you need to manage your property.”¹⁹
- The Sterling Property Management website states that “we provide **professional property management** services to both our property owners and to the individuals that lease our properties from us.... Our company has gathered the best and brightest talents, all of which are professionally licensed.”²⁰

¹⁷ October 18, 2019 Office Action at TSDR 29-30 (optimumpm.com).

¹⁸ April 30, 2020 Denial of Reconsideration at TSDR 12-13 (austinpropertymanagement.company).

¹⁹ April 30, 2020 Denial of Reconsideration at TSDR 32 (redwagonproperties.com).

²⁰ April 30, 2020 Denial of Reconsideration at TSDR 49 (sterlingproperty1.com).

- An article on the inman website states that “professional property management today is the key to turning millions of former foreclosures into cash flow generators, making it possible for a single investor or a small partnership to buy and hold dozens of properties.”²¹
- The Plus Property Management website includes a profile of its owner, who opines that “so that owners may take full advantage of their investment, they must employ **professional property management** services,” thereby “insulating our owners from the rigors of day-to-day management.”²²
- The BiggerPockets website features an article titled, “**Professional Property Management** vs. Self-Management: A Look at the Pros & Cons” that presents “two options when it comes to managing your property,” either “DIY (self-manage)” or “appoint a third party professional (property manager) to look after the property for you.”²³ Comments on the article include one stating, “You absolutely need to emphasize and reemphasize that a professional property manager can save you on major and licensed repairs.”²⁴
- The Signature Properties website features a blog post titled “Is It Time to Hire a **Professional Property Management** Company?” advising that the reader “may want to think about hiring a **professional property management** company,” and that “[t]he choice of a **professional property management**

²¹ April 30, 2020 Denial of Reconsideration at TSDR 55 (inman.com).

²² April 30, 2020 Denial of Reconsideration at TSDR 59 (investoregon.com).

²³ November 19, 2018 Office Action at TSDR 2-3 (biggerpockets.com).

²⁴ *Id.* at 8.

company could be one of the most important decisions you make as an investor and primary landlord.”²⁵

- The Mashvisor website features an article titled “The Pros and Cons of **Professional Property Management**,” stating that “the dilemma for many real estate investors is whether they should hire **professional property management** or do property management on their own.”²⁶ The article goes on to opine that “the main goal for **professional property management**, regardless of its type, is to maximize profit,” and that “[a] real estate investor should understand that there are pros and cons of **professional property management**.”²⁷

The third-party Internet evidence is presented with sufficient context to allow us to understand the use and public perception of “professional property management.” Thus, we disagree with Applicant’s contention that “it is unclear as to what genus of goods or services for which these phrases were used” in this evidence.²⁸ We find that the evidence shows use of “professional property management” to refer to real estate property management and real estate leasing, and clearly conveys that the relevant public understands PROFESSIONAL PROPERTY MANAGEMENT to name such services. Thus, the relevant public uses the term in the proposed mark to refer to this genus of services.

²⁵ November 19, 2018 Office Action at TSDR 12 (sprmrental.com).

²⁶ November 19, 2018 Office Action at TSDR 15 (mashvisor.com).

²⁷ *Id.* at 16.

²⁸ 10 TTABVUE 4 (Applicant’s Brief).

Applicant first argues against genericness on the ground that “the consuming public would not be able to determine the nature of Applicant’s goods [sic] from the mark alone,” and “property management can have several meanings.”²⁹ However, this is not the standard. Genericness of a mark is not considered in the abstract, but in relation to the particular goods or services for which registration is sought. *See In re ActiveVideo Networks, Inc.*, 111 USPQ2d 1581, 1588 (TTAB 2014) (meteorological meanings of “cloud” irrelevant as to whether CLOUDTV is generic for computer goods and services); *In re Rosemount Inc.*, 86 USPQ2d 1436, 1439 (TTAB 2008) (“It is well established that we must look to the meaning of the term within the context of the identified goods.”). “That a term may have other meanings in different contexts is not controlling.” *In re Franklin County Hist. Soc.*, 104 USPQ2d 1085, 1087 (TTAB 2012) (citing *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979)).

Applicant also contends that its proposed mark cannot be considered generic because the term as a whole does not have an entry in the Merriam-Webster Dictionary. The lack of such an entry is not dispositive, and is outweighed by the overwhelming evidence of generic use of this term as a whole. Applicant’s own Wikipedia evidence shows an entry for “property management” that defines a professional property management company with specific reference to some of the genus of services set out in Applicant’s recitation.³⁰

²⁹ *Id.* at 5.

³⁰ April 17, 2020 Request for Reconsideration at TSDR 10-11 (Wikipedia.com).

C. Conclusion as to Genericness

We find without question that Applicant's mark is the generic name of, at least, real estate property management and real estate leasing. The relevant consuming public would consider PROFESSIONAL PROPERTY MANAGEMENT to name the genus of services. Applicant's proposed mark is therefore generic. *See Cordua Rests.*, 118 USPQ2d at 1637-38.

Decision: The refusal to register Applicant's proposed mark on the ground that it is generic is affirmed.